IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

CRP.No. 1169 of 2004

OS.99/1995 of II ADDL.SUB COURT,TRIVANDRUM

REVN. PETITIONER: DEFENDANT:

TAMILNADU CEMENTS CORPORATION LTD.,
A PUBLIC LIMITED COMPANY,
735, ANNA SALAI, POST BOX NO. 5205,
MADRAS-600 002.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS: PLAINTIFF:

R.KRISHNAN NAIR, S/O.RAMAN PILLAI,
KOVIL PUTHEN VEEDU, MARUTHAN KUZHI,
KANJIRAMPARA P.O., TRIVANDRUM.

BY ADV. SRI.T.M.CHANDRAN
SRI.V.AJAKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

I.A.NO.2878/2004 IN C.R.P.NO.1169/2004

DISMISSED

10/12/2007 SD/- K.T.SANKARAN, JUDGE

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K.T.SANKARAN, J.

C.R.P. NO. 1169 OF 2004 C

Dated this the 10th day of December, 2007

O R D E R

Though the suit was filed in the year 1995, the parties are on the question of territorial jurisdiction of the court even now after the lapse of twelve years of the filing of the suit. The court below by the impugned order held that it has territorial jurisdiction over the subject matter of the suit, which is under challenge in this Revision at the instance of the defendant. The plaintiff was a stockist of cement manufactured by the defendant Company from 1976 onwards. The defendant Company is a Tamil Nadu Government owned Company having its registered office at Madras. The manufacturing unit of the Company is at Alangulam in Sattur District in Tamil Nadu State.

2. The case of the plaintiff is that he deposited Rs.33,000/- as security with the defendant Company and an agreement was entered into between the plaintiff and the defendant. With effect from 1.4.1991, the plaintiff decided to terminate the agency as stockist. Such intention was communicated to the defendant Company by the letter dated 27.3.1991. The defendant Company made an offer to pay off the amount due to the plaintiff on settlement of account by supplying cement worth the said amount. The Company accepted the termination of agency as well. It is

the case of the plaintiff that the promise to supply cement in lieu of refund of the security deposit was not honoured by the Company. A registered letter was issued to the defendant Company directing it to pay Rs.54,727.24 with interest on settlement of accounts. The suit was filed for realisation of Rs.21,727.24 as closing balance, Rs.33,000/- as the security amount and Rs.28,458.15 as interest. The total amount claimed in the plaint is Rs.83,185.39.

3. In the written statement filed by the defendant, the territorial jurisdiction of the Court to entertain the suit was questioned. It was contended that the court below has no territorial jurisdiction to entertain the suit in view of the agreement between the parties. As per the terms and conditions of appointment, no suit shall be filed against the defendant in respect of any of the clauses of the contract in any Court other than the Court which has got jurisdiction over Alangulam, Sattur Taluk. The defendant also raised a contention that the security deposit was returned and all amounts payable to the plaintiff were paid as per cheque dated 18.3.1995, drawn in favour of the plaintiff for a sum of Rs.54,727.24.

4. Issue No.2 was raised by the trial court as follows: “Whether this Court has territorial jurisdiction to try the suit?”. On the application filed by the defendant, issue No.2 was taken up for hearing as a preliminary

issue. The trial court found on issue No.2 that it has got territorial jurisdiction in respect of the suit. That order was challenged by the defendant in C.R.P.No.663 of 2001, which was disposed of as per the order dated 28.11.2002. The order impugned in that Revision was set aside and the matter was remanded to the court below for fresh disposal. While disposing of the Revision, it was observed in the order thus:

> ".. To establish that the Thiruvananthapuram courts have no jurisdiction, the defendants produced an agreement, but that was not signed by any of the parties. But the fact remains that the claim of the plaintiff is also entirely based on an agreement. He had also not chosen to produce the agreement. The court below has not considered whether there is any burden cast on the plaintiff to produce the document based on which he has filed the suit. So the finding entered into by the Munsiff is liable to be set aside. I do so."

5. After remand, the plaintiff was examined as PW1. He stated in evidence that a printed standard form containing the terms and conditions of dealership was sent to him by the defendant. He further stated that he scored off that portion in the terms and conditions conferring exclusive jurisdiction on courts at Alangulam, sent back the same to the office of the defendant at Madras. It was also stated by the plaintiff in evidence that all the transactions with the defendant Company were made at its office at Thiruvananthapuram.

6. The plaintiff filed I.A.No.4052 of 2003 to issue a direction to the

defendant to produce the agreement. It was stated by the plaintiff that the agreement, signed by him after scoring off one clause in the agreement and sent over to the defendant, is in the possession of the defendant. The defendant Company submitted before Court that there was no separate written agreement between the parties. That submission was recorded and I.A.No.4052 of 2003 was closed.

7. Curiously enough, the defendant Company did not adduce any evidence before the court below. Ext.B3 was produced by the defendant to support its contention that only the Courts at Alangulam have jurisdiction. Ext.B3 is a printed standard form. Clause 21 of Ext.B3 reads as follows:

> "All contracts for sale of cement by the Corporation shall be deemed to have been made at Alangulam and all claims thereunder are payable at Alangulam and it is distinct condition of the contract that no suit or action against the Corporation (seller) in respect of any of the clauses of the contract shall be instituted by the party concerned in any Court other than the Court which has got jurisdiction over Alangulam, Sattur Taluk."

8. On a careful perusal of Ext.B3, it can be seen that clause (1) contains a condition for deposit of a sum of Rs.3,000/- as security deposit. There is no clause in the agreement which compels the plaintiff to deposit Rs.30,000/-. So also, there is no term in Ext.B3 as to the settlement of accounts or termination of the contract at the instance of the plaintiff.

Going strictly by the terms of the contract, it cannot be said that the claim in the suit is one which comes under any of the terms of Ext.B3. So also, the plaintiff has a case that when a notice was sent to the defendant, the defendant agreed to supply cement in lieu of the amount payable to the plaintiff. Such an agreement is also outside the purview of Ext.B3. The evidence of PW1 would indicate that the Thiruvananthapuram courts had jurisdiction. In the absence of any evidence on the side of the defendant and in the absence of any signed agreement between the parties forthcoming, it cannot be said that the parties agreed to confer exclusive jurisdiction on courts at Alangulam. The court below was perfectly justified in holding that it has territorial jurisdiction in respect of the suit.

9. The revision petitioner raised a contention that the remand order in C.R.P.No.663 of 2001 was not complied with. What is observed in the order in C.R.P.No.663 of 2001 is that the court below had not considered whether there is any burden cast on the plaintiff to produce the document, based on which he has filed the suit. After remand, the plaintiff filed I.A.No.4052 of 2003 praying for a direction to be issued to the defendant to produce the agreement. In that application he stated that after scoring off clause 21 of the printed form, he signed the form and sent back the same to the defendant and that the agreement is in the possession of the defendant. The defendant stated that there is no such

agreement. There is no case for the defendant that the agreement is in the possession of the plaintiff. On the other hand, the case of the defendant is that there is no separate agreement between the parties.

10. Exclusion of jurisdiction of a court which otherwise has jurisdiction cannot be readily inferred. The exclusion must be clear and specific. The specific case of the plaintiff is that the Court at Thiruvananthapuram has jurisdiction. He adduced evidence to support his contention. There was no contra evidence on the part of the defendant. There is nothing on record on the side of the defendant to show that the Court at Thiruvananthapuram has no jurisdiction. No agreement signed by the parties by which the exclusive jurisdiction is conferred on courts at Alangulam is produced. In these circumstances, I am of the view that the court below was justified in holding that the exclusion of jurisdiction contained in clause 21 of Ext.B3 cannot be relied on to hold that the Court at Thiruvananthapuram has no jurisdiction. The order impugned does not call for any interference.

The Civil Revision Petition lacks merit and it is accordingly dismissed. No order as to costs.

(K.T.SANKARAN)
Judge

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